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GOOGLE LLC

**UNITED STATES DISTRICT COURTS**

**NORTHERN DISTRICT OF CALIFORNIA**

**SAN FRANCISCO**

ANIBAL RODRIGUEZ, *et al.* individually and  
on behalf of all other similarly situated,

Plaintiffs,

vs

GOOGLE LLC, *et al.*

Defendant.

Case No. 3:20-CV-04688 RS

**GOOGLE LLC'S ADMINISTRATIVE  
MOTION TO FILE UNDER SEAL EXHIBIT  
A TO ITS SUPPLEMENTAL LETTER  
BRIEF RE: SEARCH TERMS**

The Honorable Alex G. Tse

Action Filed: July 14, 2020

Trial Date: Not Yet Set

## I. INTRODUCTION

Pursuant to Civil Local Rules 7-11 and 79-5(c), Defendant Google LLC (“Google”) files this administrative motion to seal Exhibit A to its Supplemental Brief Regarding Search Terms. The information in this exhibit consists of non-public, competitively sensitive information that discloses aspects of Google’s business structure that Google does not disclose publicly. For the reasons set forth below, the Court should grant Google’s motion to seal select portions in Exhibit A.

## II. LEGAL STANDARD

The Ninth Circuit has “‘carved out an exception to the presumption of access’ to judicial records . . . for a ‘sealed discovery document [attached] to a non-dispositive motion,’ such that ‘the usual presumption of the public’s right of access is rebutted.’” *See Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006) (citation omitted, *emph. in original*). “[A] ‘particularized showing,’ under the ‘good cause’ standard of Rule 26(c) will ‘suffice[ ] to warrant preserving the secrecy of sealed discovery material attached to non-dispositive motions.’” *Id.* at 1180 (citation omitted). Such a showing may include evidence that the moving party “has considered and treated the information contained in the subject documents as confidential, commercially sensitive and proprietary, and that public disclosure of such information would create a risk of significant competitive injury and particularized harm and prejudice to [it]” *See Oracle USA, Inc. v. SAP AG*, 2009 U.S. Dist. LEXIS 71365, at \*4-5 (N.D. Cal. 2009).

## III. ARGUMENT

Google seeks to seal the unique document hit count numbers and subtotals that correspond to each search term in **Exhibit A**. Google has demonstrated “good cause” to permit filing these select portions under seal for the reasons specifically stated in Steve Ganem’s Declaration (“Ganem Decl.”) filed in support of Plaintiffs’ Administrative Motion to Seal (Re: Joint Search Term Letter Brief) (ECF No. 207), and elaborated below. As described in Mr. Ganem’s declaration, the correlation of hit counts, search terms, and custodians discloses confidential and proprietary aspects of Google’s business structure, resource allocation, and strategy that Google does not discuss publicly. Ganem Decl. at ¶ 6. Understanding Google’s internal resource

1 allocation and prioritization would allow a competitor to unfairly target Google’s business by  
2 optimizing their product strategy and offerings or undermining Google’s. *Id.*

3 Courts have repeatedly found it appropriate to seal documents that contain “business  
4 information that might harm a litigant’s competitive standing, *Nixon v. Warner Commc’ns, Inc.*,  
5 435 U.S. 589, 589-99 (1978), or any other “commercially sensitive information,” *Palantir Techs.*  
6 *Inc. v. Abramowitz*, No. 19-CV-06879-BLF, 2021 WL 1925459, at \*2 (N.D. Cal. Mar. 5, 2021).  
7 Good cause to seal is shown when a party seeks to seal materials that “contain[] confidential  
8 information about the operation of [the party’s] products and that public disclosure could harm  
9 [the party] by disclosing confidential technical information.” *Digital Reg. of Texas, LLC v. Adobe*  
10 *Sys., Inc.*, No. C 12-1971 CW, 2014 WL 6986068, at \*1 (N.D. Cal. Dec. 10, 2014). Publicly  
11 disclosing the information Google seeks to keep under seal would harm Google’s competitive  
12 standing, which it has earned through years of innovation and careful deliberation, by revealing  
13 sensitive aspects of Google’s proprietary systems, strategies, and designs to Google’s competitors.  
14 That alone is a proper basis to seal such information. *See, e.g., Free Range Content, Inc. v.*  
15 *Google Inc.*, No. 14-cv-02329-BLF, ECF No. 192, at 6–8 (N.D. Cal. May 3, 2017) (granting  
16 Google’s motion to seal certain sensitive business information).

17 Additionally, if the unique hit count numbers become public, Google is likely to be  
18 prejudiced because other litigants adverse to Google will use the information to gain an unfair  
19 advantage over Google in search term negotiations in those unrelated matters. This is not a  
20 speculative threat. In fact, at least one other plaintiff in an unrelated matter has sought cloned  
21 discovery from this litigation and these Plaintiffs have sought discovery from another matter.  
22 That cross-sharing of information to gain litigation advantage is not the type of “public interest”  
23 courts had in mind when articulating the requirement that there be “good cause” to seal material  
24 concerning non-dispositive matters. On the contrary, courts are concerned with the public’s  
25 interest in “understanding the judicial process.” *Kamakana*, 447 F.3d at 1178. Sealing the unique  
26 hit counts will not hinder the public’s understanding of the dispute at issue particularly because  
27 Google is not seeking to seal the overall total hit counts for both parties’ respective proposals. If  
28 information such as unique per term hit counts were routinely made public, that would chill future

litigants' willingness to freely negotiate search terms for fear that specific hit counts will eventually be used against the party in unrelated litigation.

Lastly, Google has narrowly tailored its request to seal only extraneous, confidential, proprietary material that is not necessary to aid the public's understanding of the content at issue in this discovery briefing, and that is therefore unnecessary to subject to the presumption of public access.

#### IV. CONCLUSION

For the reasons set forth above, Google respectfully requests that the Court Grant its Motion to Seal in its entirety.

Dated: January 28, 2022

Respectfully submitted,

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